

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of	)	
	)	
Telecommunications Carriers Eligible to	)	WC Docket No. 09-197
Receive Universal Service Support	)	
	)	
Lifeline and Link Up Reform and	)	WC Docket No. 11-42
Modernization	)	
	)	
Q LINK WIRELESS LLC	)	
	)	
Petition for Designation as a	)	
Lifeline Broadband Provider	)	
	)	
	)	

**RESPONSE OF THE PUBLIC UTILITY DIVISION OF THE OKLAHOMA  
CORPORATION COMMISSION TO Q LINK WIRELESS, LLC’S SUPPLEMENT TO  
PETITION OF Q LINK WIRELESS LLC FOR FCC DESIGNATION AS A LIFELINE  
BROADBAND PROVIDER ELIGIBLE TELECOMMUNICATIONS CARRIER**

**I. SUMMARY**

Q LINK WIRELESS, LLC. (“Q LINK”) filed its Petition seeking designation as a Lifeline Broadband Provider (“LBP”) eligible telecommunications carrier (“ETC”) on September 22, 2016. The Public Utility Division of the Oklahoma Corporation Commission (“PUD”), on October 14, 2016, filed a request to hold Q LINK’s Petition in abeyance.<sup>1</sup> Q LINK filed its Opposition to PUD’s request on October 24, 2016 and PUD filed its reply to Q LINK’s

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<sup>1</sup> See, *Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of Q LINK WIRELESS, LLC for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrer*, WC Docket Nos. 09-197, 11-42. (“Request”)

Opposition on October 28, 2016.<sup>2</sup> Q LINK has now filed a “supplement”<sup>3</sup> to its original petition in which it provides a public version of the “proposed LBP zip[sic] code coverage area” and withdraws its original request for confidential treatment of this ZIP code information.

PUD’s original Request asks the FCC to exercise its existing authority under 47 C.F.R. § 54.202(d)(1) to notify Q LINK that its application will not be granted automatically within 60 days, and to then hold processing of the application in abeyance pending the resolution of critical questions regarding designating authority, enforcement responsibilities, and the role of state regulatory agencies. In its Reply, PUD, in addition to demonstrating that Q LINK’s portrayal of PUD’s Request as a request for a stay was inaccurate, also described the importance of the FCC having adequate time to “properly analyze and process Q LINK’s petition,” which PUD believes cannot be accomplished in accordance with existing statutory requirements, within the 60 day streamlined process.

PUD believes that Q LINK’s supplemental filing further supports the need for the FCC to remove the processing of Q LINK’s petition from the 60 day streamlined process. The identification of the service area for which ETC designation is to be granted is a fundamental component within the ETC designation process as 47 U.S.C. § 214(e)(6) directs that designation of an eligible carrier is to be “...for a service area designated under this paragraph...”. Setting aside questions as to whether ZIP codes can adequately define a service area, Q LINK’s “definition” of its proposed Oklahoma service area within its filed supplement is not accurate.

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<sup>2</sup> See, *Reply of the Public Utility Division of the Oklahoma Corporation Commission to Q LINK WIRELESS, LLC’s Opposition to the Request to Hold in Abeyance the Application of Q LINK WIRELESS, LLC for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier*, WC Docket Nos. 09-197, 11-42 (filed October 28, 2016) (“Reply”)

<sup>3</sup> See, *Re: Q LINK WIRELESS, LLC Supplement re: Petition for Designation as an LBP*, WC Docket No. 09-197. (filed October 26, 2016)

There are sixteen (16) ZIP codes<sup>4</sup> that are not associated with Oklahoma and, therefore, Q LINK's petition is deficient in meeting the requirement to identify the service area within which it seeks ETC designation. This also creates problems for the FCC as it cannot provide an accurate designation, at least as to Oklahoma, without additional research and analysis of the Q LINK application and, ultimately, a correction being made by Q LINK.

The identification of the service area for purposes of ETC designation, based on ZIP codes (which PUD does not believe is adequate for compliance with the rules),<sup>5</sup> should not be an exceptionally challenging undertaking. However, regardless of complexity, a petition for ETC designation must be complete and accurate, and, as demonstrated by Q LINK's supplemental filing, time must be taken to review such applications. PUD does not believe the streamlined 60 day automatic approval process allows adequate time to identify and correct such errors, let alone perform the more substantive public interest analysis.<sup>6</sup> In this case, 35 days passed between the filing of Q LINK's initial petition and the public version of its service area definition, which we now know is not accurate, at least with regard to Oklahoma.

As of this filing, we are now 55 days into the 60 day streamlined process that results in automatic approval. PUD understands that, in actuality, the LBP ETC designations will not be available until December 2, 2016. This means there are 18 days, rather than 5, before automatic grant of the designation. Regardless, this demonstrates that the automatic grant process,

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<sup>4</sup> The following ZIP codes are incorrectly associated with Oklahoma in Q LINK's supplemental, public, Attachment D: 76240, 76252, 76265, 76273, 74194, 74189, 74183, 72736, 67355, 67333, 67071, 67057, 67029, 64863, 64831, 00067.

<sup>5</sup> See, *Federal-State Joint Board on Universal Service, Report and Order*, WC Docket No. 96-45 (released March 17, 2005) ("ETC Designation Order") ¶ 65 which specifies that all future ETC designation orders adopted by the Commission will include 1) the name of each ILEC study area in which designation is granted; 2) a statement that the designation is for all or part of an ILEC study area; and 3) a list of wire centers in which the ETC has been designated. Nowhere in the rules is there a provision for defining service area by ZIP codes.

<sup>6</sup> PUD believes grant of a petition for ETC designation in a rural service area on an automatic basis unnecessarily constrains or, more likely, even precludes the FCC's ability to comply with the public interest requirement found at 47 U.S.C. § 214(e)(6). This is of particular concern when qualification for streamlined processing is based on activities and requirements that are unrelated to the provision of Lifeline services generally or, more specifically, the provision of Lifeline services in rural service areas.

specifically in the case of Q LINK at least as it relates to Oklahoma, does not provide adequate time for the FCC to review the application in compliance with the applicable statutory requirements. Accordingly, PUD again urges the Commission to exercise its existing authority and notify Q LINK that its petition for designation as a LBP ETC will not be granted automatically, and then take the time necessary to perform a review and reach a determination in accordance with the rules and statutes.<sup>7</sup>

## II. SERVICE AREA REQUIREMENTS

Setting aside issues of accuracy, PUD does not believe that Q LINK's use of ZIP codes as the means with which it attempts to define the service area for which it is seeking ETC designation complies with the statutory requirements. As indicated in PUD's Reply, 47 U.S.C. § 214(e)(6), under which the FCC is granting such ETC designations, indicates that the Commission shall, in the case of non-rural areas, and may, in the case of areas served by rural telephone companies, designate ETCs for "a service area." While the Commission has latitude to designate the service area in the instance of non-rural areas, 47 U.S.C. § 214(e)(5) specifies a definition of "service area" when the designation involves an area served by a rural telephone company.<sup>8</sup> It states:

*In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.*

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<sup>7</sup> Also, PUD continues to assert that the FCC, in addition to gaining adequate time for review of such an application, should also hold the actual processing in abeyance in order to gain the benefit of the D.C. Circuit Court's ruling on NARUC's Petition for Review and the FCC's response to the Pennsylvania Public Utility Commission's Petition for Clarification.

<sup>8</sup> This definition is found within the rules at 47 C.F.R. § 54.207(b). This subsection also specifies the process by which an area different from a study area can be redefined.

Q LINK, at least in its publicly available documents, does not provide any method or indication that would allow the FCC to understand or otherwise identify, based on the ZIP code list provided, the specific study areas associated with areas served by the rural Oklahoma telephone companies in which ETC designation is requested to be granted. Without identifying the study areas, any designation granted in areas served by rural telephone companies based solely on ZIP codes would not comply with statutory designating authority found at 47 U.S.C. § 214(e)(6).

Since the petition is for designation within the entire state of Oklahoma, there could be a suggestion to simply utilize a reference to “all study areas in Oklahoma.” However, this is problematic as well. First, as PUD has already indicated in its Reply, 47 U.S.C. § 214(e)(6) requires that “Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.” PUD does not believe that the FCC can perform the required public interest analysis of an “area served by a rural telephone company” (i.e., a study area) without having a clear definition of each study area. Acquiring such a clear definition is possible. However, it does take time for review, and, in the case of Q LINK, corrections. Second, reliance on a generic description of “all study areas in Oklahoma” runs contrary to the FCC’s ETC designation administrative requirements. The FCC has mandated that “...all future ETC designation orders adopted by the Commission will include: (1) the name of each incumbent LEC study area in which an ETC has been designated; (2) a clear statement of whether the ETC has been designated in all or part of each incumbent LEC’s study area; and (3) a list of all wire centers in which the ETC has been designated, using either the wire center’s common name or the Common Language Location Identification (CLLI) code.”<sup>9</sup>

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<sup>9</sup> *ETC Designation Order*, released March 17, 2005, ¶ 65.

Unfortunately, adequate time does not exist under the streamlined processing option to address these service area issues and problems created by the use of ZIP codes, but the good news is that the FCC, under its existing authority, can afford itself an adequate amount of time by informing Q LINK that their petition will not be granted automatically under the streamlined process.<sup>10</sup>

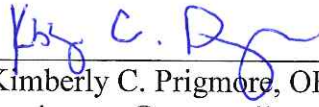
### **III. CONCLUSION**

PUD continues to urge the Commission to notify Q LINK that its petition will not be granted automatically under the streamlined process. Only then can the FCC have adequate time to process Q LINK's petition in accordance with statutory and administrative requirements, and allow for identification and correction of all errors, to include those observed by PUD in Q LINK's description of its proposed service area. Additional time would also afford the FCC the ability to perform the required public interest analysis for those areas of requested designation that are served by rural telephone companies. In addition to the issues described above, PUD also continues to request that the FCC, once Q LINK is notified that their petition will not be automatically granted, hold the processing of the petition in abeyance pending 1) the D.C. Circuit Court's ruling on NARUC's Petition for Review; and 2) the FCC's response to the Pennsylvania Public Utility Commission's Petition for Clarification.

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<sup>10</sup> As indicated in its Reply, PUD's stated concerns are specific to the referenced matters as they relate to Oklahoma.

Respectfully submitted,

  
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